

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 501 of 1999.

Date of decision: 25.5.2007.

State of H.P.	... Appellant
Versus	
Jiwan Singh & Anr.	... Respondents

Coram :

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?¹ No.

For the appellant: Mr. Ashutosh Burathoki, Additional Advocate General.

For the respondents: Mr. Dinesh K. Sharma, Advocate.

V.K. Ahuja, J.:

This appeal has been filed by the appellant/State of H.P. against the judgment of the Court of learned Sub Divisional Judicial Magistrate, Rajgarh, Camp at Sarahan, dated 16.4.1999 vide which both the respondents were acquitted of the charge framed against them under Section 451,323,506 read with Section 34 I.P.C.

Briefly stated the facts of the case are that on 29.4.1998 at about 4.40PM, a report was lodged by one Smt. Lata Devi that at about 12.30 during night time today she was sleeping in her room and both the accused persons namely the respondents entered her room by pushing the door and giving her beatings with fists and legs and she also suffered an injury over her teeth and her one tooth was broken. She

¹Whether reporters of Local Papers may be allowed to see the judgment? No.

raised an alarm and her both sons and one Leela Ram came to the spot and both the accused persons ran away. It was also alleged that her bangles were also broken at that time and while leaving the place, respondents also gave a threat to her. On this report, a case was registered and after investigation, the challan was filed before the learned trial Court. The learned trial Court framed a charge as detailed above and tried the respondents which trial ended in the acquittal of the respondents.

The submissions made by the learned Additional Advocate General were that the learned trial Court had not appreciated the evidence in right perspective. It was also submitted that the learned trial Court had been swayed by the minor contradictions as to the fact as to whether the door and bolts were broken or not. It was also submitted that the statement of the complainant has been duly corroborated by two other eye witnesses and as such, the guilt of the respondents was established beyond any reasonable doubt, but the learned trial Court came to a wrong conclusion which findings are liable to be reversed.

On the other hand, the learned counsel for the respondents supported impugned judgment for the reasons given therein supplementing it by the submissions that there was long standing enmity in between the parties and the evidence was quite contradictory in regard to the fact as to whether the door and bolts were broken or not and no charge under Section 325 IPC was framed against the respondents who have been rightly acquitted by the learned trial Court which findings cannot be said to be perverse calling for an interference by this Court.

Coming to the evidence led by the prosecution in support of their case, a perusal of statement of PW-1 Lata Devi shows that she stated the facts as alleged in the complaint that the accused persons came, broke open the door and kunda and bolts and Beer Singh gave a fists blow on her teeth which was broken, while Jiwan Singh gave blows with legs and fists. She raised an alarm and the accused persons ran away and on the second day, she lodged the report Ext.P-1 at Police Station. She further stated that her bangles were broken at that time. She did not name that both her sons Amarjit and Kamaljit came there on hearing noise or rescued her or only independent witness examined in the case, namely, PW-6 Leela Ram came there or rescued or had seen the occurrence. She was also silent about the fact that if any threat was given to her by the accused persons as alleged in the complaint for which charge was also framed as against the respondents. In the cross-examination, she clearly admitted that a civil case is going on with the accused persons in the Civil Court as well as in Tehsil and she had filed 4-5 criminal cases in this very Court out of which 2-3 were against the accused persons. She further stated that she wants that the accused persons should not pursue their civil cases in regard to the land for which there is dispute in between the parties. Her statement is sufficient to show that there is long standing enmity in between the parties. The enmity is a double edged weapon which can be used for causing the injuries upon the complainant or which can be used for falsely implicating the accused persons to put pressure upon them to withdraw the cases pending against them. She further stated that her tooth was broken which she gave to the police on the same day when she lodged the FIR. She further stated that there was only one palla of the door

which was broken apart from the bolt, again stated that bolt had not been broken but iron stick used for bolting the door had been broken. The learned trial Court had referred to the statement of PW-4 ASI Duni Chand, Investigating Officer who observed that the door and the bolts had not been broken but there was a slight shift in the bolt and the learned trial Court had rightly taken this contradiction as major since the entry to the house of complainant could be made only if the door was opened by the complainant or the door was broken or partly pushed by the accused persons for making an entry in the house of the complainant. The contradiction in question is relevant and material since the veracity of the statement made by the complainant can be tested only by such contradictions.

Coming to the statement of PW-2 Kamaljit son of the complainant aged about 16 years, the complainant as mentioned above had not stated that Kamaljit who was sleeping in the other room also saw the occurrence or rescued her from the accused persons. He also stated that the accused persons broke the door and when the light was lit by his mother, accused Beer Singh gave a blow on the mouth of his mother and her one tooth was broken, while the other accused gave blow with legs and fists. He stated that threat was given by the accused persons to take away the life of the complainant while they were leaving the place but it was not so stated by the complainant as mentioned above. He stated that there was a Gutka in the door and one Phati of the door was broken. He stated that his statement was not recorded by the police since when he came back from the school. The police had already left the place. He stated about the blood having oozed out from the arm of the complainant as well as from her mouth.

It was not so stated by the complainant herself and does not find corroboration from medical evidence which shall be discussed below. He stated that he had run away from the place when blow was given by Beer Singh with fists and quarrel continued for half an hour, while the complainant had stated that it continued for 5-10 minutes which contradiction is not very material. He stated that Leela Ram came after ten minutes of the quarrel having started and the blood was on the clothes of his mother which have not been proved in evidence.

Coming to the only independent witness examined in the case or other eye witness PW-6 Leela Ram, he has stated that Lata Devi and Kamaljit raised an alarm from their house and he went there and accused persons were beating the complainant and he rescued the complainant from the accused persons which was never stated by the complainant as PW-1 that an alarm was raised. He admitted that he was a witness in another case against the accused persons in a complaint which fact was admitted by the complainant herself. He admitted that there are 4-5 houses near the place of occurrence but none from those houses have been examined as an eye witness. PW-1 admitted that the house of this witness is at a distance of 1½ KM from her house and it is impossible for PW-6 Leela Ram to have reached the place, seen the occurrence particularly when the complainant states that the accused persons remained at the spot for 5-10 minutes. The witness is an interested witness since he has earlier deposed in a criminal case against the accused persons in favour of the complainant and there was no occasion for him to be present at the spot at late hours and he admitted that he reached there only hearing of the cries of the complainant and her sons who have nowhere stated that they raised an

alarm at that time. Thus, it is clear that the learned trial Court had rightly observed that there is no possibility of this witness having seen the occurrence but seems to be a procured witness since his name was added in the F.I.R. which was lodged after 16 hours which clearly shows that the time was taken to procure false witnesses.

Coming to the medical evidence PW-3 Dr. Sandeep Sharma has stated that there was redness present on the nose and upper lip. She was complaining of pain on parts of body but there was no external mark of injury or no significant tenderness was present. In case the injury has been sustained on the parts of the body and the blood had also oozed out as stated by PW-2 Kamaljit, it must have been visible but Medical Officer did not found injury or tenderness on the parts of the body of the complainant. In regard to the dental injury as stated by PW-2 that he made a reference to the Dental Surgeon, but neither there was any charge in regard to this injury under Section 325 I.P.C. nor the Dental Surgeon was examined to substantiate this charge. Moreover, probable duration was given as 0-6 hours by the Medical Officer, though the complainant had been examined by him on 29.4.1998 at about 5.30PM i.e. after about 17 hours of the occurrence and the Medical Officer had not fixed the time as given by the complainant in her statement. Therefore, the medical evidence does not corroborate the testimony of the complainant fully.

From the above discussion, it is clear that there were contradictions and infirmities in the prosecution version and the learned trial Court had rightly discussed it and these findings cannot be said to be perverse calling for an interference by this Court and as such are liable to be affirmed. There is no merit in the appeal filed by the

appellant, which is dismissed accordingly. Bail bonds stand discharged forthwith. A copy of the judgment along with record be sent to the concerned Court.

May 25, 2007
(BSS)

(V.K. Ahuja),
Judge